given in the instant case follows the general idea of such statutes throughout the states. The correct procedure for a defendant having a counterclaim in excess of the court's jurisdiction seems to be to suffer judgment and bring another action in the appropriate court.

DEBTOR AND CREDITOR—SALE OF LAND—PREMATURE TENDER BY VENDEE.—A contract for the sale of land provided for specified payments on the purchase price annually, with interest on the unpaid portion, and conveyance of the premises upon payment of half of the total. The purchaser tendered payments in advance and upon the vendor's refusal to accept, brought a bill to compel conveyance. *Held,* for defendant. *Peryer* v. *Pennock* (Vt. 1921) 115 Atl. 105.

The vendor of a chattel is not compelled to receive a portion of the purchase price not yet due and earning interest. *Morgan* v. *East* (1890) 126 Ind. 42, 25 N. E. 867. But he may waive his right and accept payment before maturity. See *Alexander* v. *Herndon* (1909) 84 S. C. 181, 185, 65 S. E. 1048. A tender by a mortgagor before the date of maturity, which is rejected by the mortgagee, has no effect on the jural relations of the parties. *Chicago & I. R. R.* v. *Pyne* (C. C. 1887) 30 Fed. 86. This is generally so, even though the full amount of the mortgage with interest to the date of maturity, is tendered. *Pyross* v. *Fraser* (1909) 82 S. C. 498, 64 S. E. 407. From an economic point of view a mortgage loan differs from a sale on credit in that the former is usually of benefit to the creditor as well as the debtor, while the latter is usually primarily for the accommodation of the purchaser. It follows that the same reasons of policy which prohibit premature tender, even with interest in full, by a mortgagor, do not necessarily apply. If a vendee debtor can show some definite and proximate probability of hardship unless permitted to make immediate payment, and if time is immaterial to the creditor, the latter should be compelled to accept payment. A tender of interest to maturity in such a case, might well remove a reason for regarding time as material. In the instant case, its immateriality is not apparent and the decision is sound. *Cf. Hanson* v. *Fox* (1909) 155 Cal. 106, 99 Pac. 489.

DOWER—MECHANICS' LIEN—PRIORITY.—In an action to marshall liens, the plaintiff, holder of a mechanics' lien, claims priority over the defendant's right of dower. *Held,* for the defendant. *Glassmeyer* v. *Michelson* (1921) 23 Ohio N. P. (N. S.) 537.

Dower is generally given priority over other claims which arise against an estate after marriage, the reasons assigned being that "dower is a favorite of the law" and that the inchoate doweress is "passive" and "can do nothing to protect her rights." See *Johnston* v. *Dahlgren* (1895) 14 Misc. 623, 624, 36 N. Y. Supp. 806; *Bishop* v. *Boyle* (1857) 9 Ind. 169, 171. But dower is subordinated to purchase money security. *Harrow* v. *Grogan* (1905) 219 Ill. 288, 76 N. E. 350 (purchase money mortgage); *Roush* v. *Miller* (1894) 39 W. Va. 638, 20 S. E. 663 (trust deed); *Bothe* v. *Gleason* (1916) 126 Ark. 313, 190 S. W. 562 (vendor's lien). The mechanics' lien, however, is generally subordinate to the inchoate right of dower. *Johnston* v. *Dahlgren, supra; Stewart, etc.* v. *Whicher* (1914) 168 Iowa 269, 150 N. W. 64. But in one case it has been given priority as to improvements on the ground that the lien attached to them as the work progressed and that, as the husband had no right to the improvements unencumbered, the doweress could be in no better position. *Nazereth Lit. & Benev. Inst.* v. *Lowe* (Ky. 1841) 1 B. Mon. 257. But the general view does not regard a mechanics' lien as attaching only to improvements. It is rather a privilege of foreclosing for the claim against the realty improved as well as against the improvements. See Rockel, *Mechanics' Liens* (1909) § 2; New York Lien Law § 3. These as a

practical matter cannot generally be satisfactorily severed for purposes of foreclosure. Nevertheless, the result of the minority doctrine is preferable in that it gives priority to the one who has added value to the property to the extent of that increment without diminishing the original interest of the doweress. This is not inconsistent with the general theory of mechanics' liens, for as to improvements dower at most attaches simultaneously with the lien. Nevertheless courts persist in an often irrational protection of the doweress.

ELECTIONS—ELIGIBILITY FOR OFFICE—MANDAMUS TO COMPEL PRINTING OF NAMES ON BALLOTS.—The Workers' League nominated for Mayor and President of the Board of Aldermen of New York City two men convicted of criminal anarchy, whose sentences were not to expire until after the term of office began. The League's committee filed certificates, valid on their face, to fill vacancies, and when the Board refused to act, an application was made to mandamus the Board of Elections to print the names on the ballots. *Held,* the Appellate Division's refusal to grant the writ of mandamus was in the exercise of a reasonable discretion. *Application of Lindgren* (1921) 232 N.Y.59, 133 N. E. 353.

Mandamus will issue in proper circumstances against election officials to compel them to act. *People* v. *Hartley* (1897) 170 Ill. 370, 48 N. E. 950; *People* v. *Dooling* (1910) 141 App. Div. 29, 127 N. Y. Supp. 748. But even though a Board of Elections has a clear ministerial duty to print names on the ballot on the filing of a certificate valid on its face, or to issue certificates of election, courts in their discretion will not compel performance of such acts, if their final effect would be a nullity. *People* v. *Board of Canvassers* (1891) 129 N. Y. 360, 29 N. E. 345; *Clarke* v. *Trenton* (1887) 49 N. J. L. 349, 8 Atl. 509. There is no provision in the New York law preventing a convict from being nominated for office. But he is ineligible to hold office while imprisoned. N. Y. Cons. Laws (1909) c. 40, § 510. The court in the instant case reached their decision on the ground that since the object of election machinery was to elect men eligible to hold office, they would not by mandamus compel a useless act. The opinion did not consider the question of the policy of a protest vote. Moreover, the applicant is asserting his own and not the nominee's civil rights, and since the Election Law contains no prohibition against the candidacy of a convict, it is questionable whether the court's main premise was warranted. It was a doubtful exercise of discretion for the Appellate Division to deny the mandamus when the concurrence of election and pardon, no matter how remote the possibility, before the term of office, would make the nomination anything but futile. The opinion did not discuss pardon.

INSURANCE—PUBLIC AS BENEFICIARY—BREACH OF CONDITION BY INSURED.—A statute required every jitney bus operator to carry indemnity insurance for the benefit of persons injured by the bus, and required the policy to provide for the payment of judgments obtained against the operator. The plaintiff sued to recover the amount of a judgment obtained against an operator thus insured by the defendant company. The operator had breached a condition in the policy. *Held,* for the plaintiff. *Bayle* v. *Manufacturers' Liability Ins. Co.* (N. J. 1921) 115 Atl. 383.

The beneficiary of an insurance policy cannot recover if it has become void by the insured's breach of condition. So in the case of a life insurance policy a breach of condition by the insured prevents a recovery by the beneficiary, even if her interest was vested before the breach. *Behling* v. *N. W. Nat. Life Ins. Co.* (1903) 117 Wis. 24, 93 N. W. 800. And where a mortgagor insures the property for the benefit of the mortgagee a breach of condition by the former defeats the right of the latter. *Merwin* v. *Star Fire Ins. Co.* (1876) 7 Hun 659, *aff'd* (1878) 72 N. Y. 603; see *City Five Cents Savings Bk.* v. *Pennsylvania Ins. Co.* (1877)